IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

CRP.No. 55 of 1995(A)

AGAINST THE ORDER DATED 27/05/1994 IN EP.278/89 IN OS.234/1978 of PRINCIPAL SUB COURT, PALAKKAD

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REVN. PETITIONER:

ABBAS, S/O MOOSAKUTTY HAJIYAR,
RESIDING AT CHULLIKOLUMBU, P.O.
VAVULLIAPURAM,
ALATHUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITAMBARESH

RESPONDENTS/ PETITIONERS 1 TO 6
& RESPONDENTS 1 TO 19:
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1. **AYISHAKUTTY, W/O LATE KUNJUKUTTY ALIAS YUSUFF, RESIDING AT THOTTUKATTIL, VAVULLIAPURAM, ALATHUR TALUK, PALAKKAD DISTRICT.**
***(DIED)**

2. **MYMOONA, D/O AYISHAKUTTY, RESIDING AT - DO -**

3. **RAHIMA, D/O AYISHAKUTTY, RESIDING AT - DO -**

4. **SAFIYA, D/O AYISHAKUTTY, RESIDING AT - DO -**

5. **KADEEJA, D/O AYISHAKUTTY, RESIDING AT - DO -**

6. **MUMTHAJ, (MINOR) D/O AYISHAKUTTY, RESIDING AT - DO - (MINOR 6TH RESPONDENT REPRESENTED BY GUARDIAN MOTHER 1ST RESPONDENT)**

** 7. IBRAHIM, S/O SAIDU,
RESIDING AT THOTTUKATTIL,
ADIPERANDA, THONIPADAM, KAIRADI
VILLAGE, CHITTUR TALUK,
PALAKKAD DISTRICT.

8. HAMSA, S/O SAIDU, RESIDING AT -DO-.

9. AYSUMMA, D/O LATE JABBAR, RESIDING
AT VAVULLIAPURAM,
ALATHUR TALUK, PALAKKAD .

10. SARAUMMA, D/O LATE JABBAR, RESIDING
AT DO. DO.

11. MUTHUMMA, D/O LATE JABBAR, RESIDING
AT DO. DO.

12. BEEVUMMA, D/O LATE JABBAR, RESIDING
AT DO. DO.

13. AMMALAMMA, W/O LATE JABBAR, RESIDING
AT DO. DO.

14. ASSIYA, W/O LATE ABDUL RAHIMAN, RESIDING
AT DO. DO.

15. RAFEEQUE, S/O ABDUL RAHIMAN, RESIDING
AT DO. DO.

16. RAJEENA, MINOR, D/O ABDUL RAHIMAN, RESIDING
AT DO. DO.

17. ARIFA, MINOR, D/O ABDUL RAHIMAN, RESIDING
AT VAVULLIAPURAM,
ALATHUR TALUK, PALAKKAD .

18. SULTAN MUHAMMAD, (MINOR), S/O ABDUL RAHIMAN,
RESIDING AT DO. DO.

19. SHAJIRA, D/O LATE ABDUL RAHIMAN, (MINOR) RESIDING
AT DO. DO.

20. KAMARLAILA, (MINOR), D/O ASSIYA,
RESIDING AT DO. DO.

21. THAJUNNISAA, MINOR, D/O ASSIYA,
RESIDING AT DO. DO.

(MINOR RESPONDENTS 16 TO 21 REPRESENTED BY THEIR GUARDIAN MOTHER 14TH RESPONDENT)

**22. MAKKAI @ UNNICHEKKAN, W/O LATE MUTHU,
RESIDING AT VAVULLIAPURAM,
ALATHUR TALUK, PALAKKAD .**

23. UMAIBA, D/O LATE MUTHU, RESIDING AT DO. DO.

**24. SAINABA, W/O AZEEZ, RESIDING AT PAGHATHARA,
CHERAMANGALAM, CHITTUR TALUK, PALAKKAD.**

**25. ABDUL RAHIMAN, S/O LATE KUNJUKUTTY, @ YUSUFF,
RESIDING AT DO. DO.**

*** IT IS RECORDED THAT R1 IS NO MORE AND THAT HER LEGAL HEIRS ARE R2 TO 6, ALREADY IN THE PARTY ARRAY VIDE ORDER DATED 20.9.06 IN CRP.**

****R7 TO R25 ARE DELETED FROM THE PARTY ARRAY VIDE ORDER DATED 29.3.06 IN CRP.**

**R1 & R25 BY ADV. SRI.A.P.CHANDRASEKHARAN (SR.)
SRI.D.KRISHNA PRASAD.
R7, R22 TO R24 BY ADV. C.P. DAMODARAN NAYAR.**

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. 55 OF 1995

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Dated this the 7th day of March, 2007.

O R D E R

This revision is preferred against the order of the Subordinate Judge, Palakkad in E.P. 278/89. The Subordinate Judge, by his order dated 27th May, 1994 recorded the delivery and closed the E.P. The learned counsel for the review petitioner challenges the delivery order on the following grounds.

2. In order to effect delivery, initially an Amin from the Munsiff Court, Alathur was deputed and when he visited the property the review petitioner herein objected delivery of the property and so the warrant was returned unexecuted. Thereafter, the decree holder moved an application before the Subordinate Judge, Palakkad again for delivery of the property with notice to the respondents. When delivery is obstructed by a person, the decree holder is legally entitled to file an application for removal of resistance and obtain delivery. The fact that the resistor/obstructor has been made a party to the subsequent execution application is indicative of

the fact that the decree holder wanted aid of the Court to remove the resistance and deliver the property. It is only after hearing the parties the Court passed an order to effect delivery of the property. In accordance with the said order of delivery, the Amin visited the property and it is reported that he had delivered the property and had complied with the necessary procedural formalities contemplated under Order 21. Therefore, one cannot hold that the order passed by the learned Subordinate Judge is suffering from any illegality or irregularity.

3. The learned counsel for the revision petitioner had brought before me a decision of the Apex Court reported in **Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal and another (1997 (3) SCC 694)**. The Apex Court has very clearly laid down in that case that when an application under Order 21 Rule 35 is made and there is an obstruction caused by a person, the party cannot again ask for delivery of the property with the aid of the police praying for removal of the obstruction. In so far as this case is concerned, the Court after hearing the obstructor had passed an order directing delivery of the property. The said order has become final and it is in pursuance of the said order delivery has been effected by the Amin. Therefore, the

decision relied upon by the review petitioner will not apply to the facts of the present case. Therefore, the C.R.P. lacks merit and the same is dismissed.

M.N. KRISHNAN, JUDGE.

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C.R.P. 55 OF 1995

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M.N. KRISHNAN, J.

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C.R.P. 55 OF 1995

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O R D E R

7th March, 2007.